HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No.: 564 of 2006
Reserved on: 12.10.2007
Decided on: 26.10.2007

Shakti Chand .....Appellant.

Versus

Janak Raj and others .....Respondents.

Coram:

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting?	No.
For the appellants:	Mr.Sanjeev Sood and Mr.B.K. Sood, Advocates.
For the respondents:	Mr.N.K. Thakur, Advocate.

V.K. Ahuja, J:

This is an appeal filed by the appellant against the judgment and decree of the court of learned Additional District Judge, Una, dated 29.9.2006, vide which he had dismissed the appeal filed by the appellant against the judgment and decree of the court of the learned Sub Judge, Court No.2, Amb, dated 11.6.2003, dismissing the suit of the appellant for declaration and injunction.

Briefly stated the facts of the case are that the appellant as plaintiff filed a suit for declaration with permanent injunction and in the alternative, for

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[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

possession. It was alleged by the original plaintiff that she is in possession of the land measuring 0-11-32 hectares marked by letters A.B.C.D.E.F. as shown in green colour in the site plan bearing Khasra No.3479 and entry in the name of the defendants vide order dated 8.9.1988 is wrong and illegal having been made at the back of the plaintiff. The plaintiff alleged that she is in possession of the suit land as tenant without payment of rent for the last 30 years and defendants are strangers whose *Abadi*, shed and kitchen are situated on the side of the suit land and in connivance with the revenue staff, they got the entry in their favour in regard to their possession and as they are interfering on that basis, hence the suit filed by the plaintiff.

Respondents/defendants pleaded that the suit land was in possession of their father as Gair Marusi Dom under original plaintiff and after the death of their father, they are in possession of the suit land and they have constructed one shop and one kitchen over the suit land. They also pleaded that they have become owner by operation of H.P. Tenancy and Land Reforms Act and as such, the suit is liable to dismissed.

The learned Trial Court framed the issue mainly in regard to the possession of the plaintiff over the suit property and additional issue was also framed in regard to the fact as to whether the defendants have become owners of the suit land by way of adverse possession, apart from the other issues. The learned Trial Court held that the plaintiff was not in possession of the suit property and it was also held that defendants have failed to prove that they have become owner by way of adverse possession.

On appeal, those findings were affirmed by the learned First Appellate Court. During the course of the arguments, learned counsel for the appellant submitted that an application for amendment of the plaint filed by the plaintiff was allowed but the learned First Appellate Court failed to frame any issue on that amendment and an application under Order 14 Rule 5 CPC was also filed for framing of additional issues but the learned First Appellate Court failed to frame an issue and decide that application, which remained undecided. A perusal of record shows that application for amendment of the plaint was allowed and subsequently, it was observed by the learned First Appellate Court that no other issue arises or claimed. Thereafter, the application under Order 14 Rule 5 CPC was filed by the plaintiff which never remained undecided rather the court passed a reasoned order and disposed of the same. Therefore, both these submissions made by the learned counsel for the appellant are repelled being devoid of any merit.

Next plea taken by the learned counsel for the appellant was that the learned First Appellate Court had come to the conclusion that the plaintiff/appellant was in possession of the suit land, therefore, the relief of injunction at the most could have been granted in favour of the plaintiff/appellant.

I have gone through the judgment of the learned First Appellate Court and there are no findings recorded in favour of the plaintiff that the plaintiff was proved to be in possession of the suit land. Therefore, this submission also falls squarely on the ground. During the course of the arguments, the learned counsel for the appellant had failed to point out to any oral as well as

documentary evidence which was not considered by the courts below which calls for reappraisal of evidence by this Court. Once there is nothing on the record to show that any evidence oral or documentary was wrongly considered by the courts below or not considered, no question of law is involved, what to talk of substantial question of law, for reappraisal of the evidence or admission of the appeal. There are findings of the fact recorded by both the courts below and since no substantial question of law is involved, these findings do not call for reappraisal of evidence by this Court and as such there is no merit in this appeal which is dismissed accordingly. The parties are left to bear their own costs.

October 26, 2007 **(V.K. Ahuja), J.**
(TILAK)